2290.

SUPREME COURT OF THE UNITED STATES.

No. 87.

CHARLES MINTURN, App't,

vs.

LAFAYETTE MAYNARD and al.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Libel	1	3
Schedule A	5	5
" B	9	8
" C	13	10
Subpœna and service	17	12
Leave granted Proctor to file answer for Grant	18	12
Answer of Isaac T. Mott	19	13
Replication to Mott's answer	22	14
" to answer of Lafayette Maynard, Charles J. Brenham, and Frederick Billings	22	15
Answer of Gilbert A. Grant	23	15
Interrogatories referred to in Grant's answer	26	18
Replication to Grant's answer	28	18
Answer of Minturn to interrogatories	29	19
Amended answer to "	30	20

	Original.	Print.
Agreed statement of the case	32	21
Decree	35	23
Suit dismissed as to Grant	37	24
Appeal granted	31	21
Complaint of plaintiff	39	25
Clerk's certificate	41	26
Alias attachment	42	27
Appeal Bond	43	27
Clerk's Certificate	44	28

UNITED STATES DISTRICT COURT,
For the Northern District of California:

CHARLES MINTURN

vs.

L. MAYNARD, of San Francisco, California, THOMAS G. WELLS, of Keene, New Hampshire, and LUCIEN SKINNER, of Boston, Massachusetts, F. BILLINGS and J. C. BRENHAM, who resides in the City of San Francisco, California, and against ISAAC T. MOTT, who resides in Mazatlan, and J. DE LA MONTAIGNE, who resides in the City and State of New York, G. A. GRANT, who resides in San Francisco, California, C. M. NEAL, who resides in Nevada, California, and THOMAS L. CHAPMAN, who resides in Springfield, Massachusetts.

To the Honorable Ogden Hoffman, Jr., Judge of the above Court.

The libel of Charles Minturn, of the City of San Francisco, State of California, against the above named defendants, late owners of the Steamship Gold Hunter, of San Francisco, in a cause civil and maritime.

1*st.* The said libellant alleges, that on or about from the first day of September last, until the 20th day of December, 1850, the said Charles Minturn was the duly appointed and authorized general agent and broker for said steamboat, at the said port of San Francisco.

2*d.* That during said period, when said Charles Minturn was so as aforesaid general agent and broker for said boat, it became and was necessary to procure and pay for the labor, services, materials, and supplies which are particularly set down and specified in schedules A. B. and C., hereto annexed, and which said libellant prays be taken and considered as part of this libel, to fit and prepare and enable said steamboat Gold Hunter to execute and perform the voyages and duties, which by the direction of the owners thereof she was engaged.

3*d.* That during said period, and at the several dates specified in said schedules, the said Charles Minturn paid the several sums of money specified in said schedules as paid by him, for the purposes therein specified, and that by an arrangement between himself and the owners of said steamboat, he became and was legally entitled to charge and receive from said owners, the sum of five per cent. upon the sums of money received, and on the sums of money disbursed by him the said Charles Minturn, as such agent and broker of said steamboat.

4*th.* That there is now justly due and owing to said Charles Minturn, for such supplies, advances and other matters, set forth in

such schedules hereto annexed, from the said defendants above named, the sum of

5*th*. That such sum is due for such supplies and necessaries as were absolutely necessary for said steamer, in the prosecution of her several voyages.

6*th*. That said Steamer Gold Hunter has been sold under a decree of this Honorable Court, at a suit instituted in this court for the recovery of mariners' wages due them. And that, after paying said seamen out of the proceeds of said sale, and paying all other maritime liens upon said steamer, as filed in this Court, there is a large surplus remaining in the register of this Court, belonging to and the property of some of the above named defendants as owners as aforesaid of said steamer, some of whom are non-residents of the State of California, and reside as is set forth in the title of this cause, and that libellant is informed and believes that most of said owners who are interested in the fund in the registry of this court are insolvent, or have no other property, goods, charters or effects, except such as is in the registry of this court, in this suit.

Wherefore the said libellant prays process of monition to the marshal of this District, commanding him to cite and admonish the said defendants to be and appear before this Honorable Court on such day, to be inserted in said monition, as this Honorable Court shall direct, then and there to answer the libellants in the premises, according to the course of Courts of Admiralty, and the rules and practice of this court in civil cases of Admiralty and maritime jurisdiction, and that a decree be entered against said defendants in favor of the said libellant, for the sum of four thousand four hundred and two $\frac{61}{100}$ dollars, due the libellant aforesaid. And also that an attachment issue against the goods of the said defendants, who are now residents, as well as the chattels, credits, and effects, and in want of such goods, that the surplus in the registry of this honorable court be attached or sequestered in the hands of the registry of this court, to satisfy the libellant's demand aforesaid, as far as the same will go for that purpose. And that this Honorable Court will pronounce for the same against the said defendants, and decree the same to be paid out of said surplus in registry, *pro tanto* as far as the same will go; and for such other and further relief and redress as to right and justice appertains, and as this court is competent to give in the premises.

(Signed) SMITH & WILSON,
Proctors.

JNO. DWINELLE,
Advocate.

CITY AND COUNTY OF SAN FRANCISCO, ss:

Horatio N. Squires being duly sworn, deposeth and saith, that Charles Minturn, the above libellant, is confined to his room by sickness and unable to attend to business. That deponent is his clerk, and

perfectly conversant with *the* all the matters set forth in the foregoing libel, and that the same are true of deponent's own knowledge.

HORATIO N. SQUIRES.

Sworn to before me this 22d October, 1851.

H. B. JANES,
U. S. Comm'r.

Schedule A.

Steamer Gold Hunter and Owners in acct. with Chas. Minturn, Agent.

1850.			Dr.
Sept. 5,	To cash paid crew per order, $423.32; posting bills, $4. . . .		$427 32
" "	" " " " " $73.33; boat and sculls $225 . . .		298 33
" "	" bill lightering, $30; 2 thermometers $6		36 00
" 7	" paid F. Grant, wages steward, $320.83; use scows, $5 . . .		325 83
" 9	" bill oars, $24.90; lightering sails and spars, $50 . . .		74 90
" "	" posting bills, $3; mate's wages, $25; watchman, $14.67 . .		44 67
" 10	" F. Murphy & Co.'s bill, damask and bedding		588 82
" "	" washing 279 pieces, $69.75; 2 American ensigns, $88 . .		157 75
" "	" W. Beale & Co. bills, flour, butter, candles, &c. . . .		81 24
" 11	" crew, per order, $84; "Herald" printg. & advertg. $100 . .		184 00
" "	" 1 bedstead $20; 1 secretary 28.50 .		48 50
" 12	" posting bills $15; G. Castle, seaman, $12		27 00
" "	" 1 bbl. oil $58; sheathing metal $113.75		171 75
" 13	" Briggs' bill, lightering coal and detention lighters . . .		252 00
" 14	" baker's bill, $36.10; blacksmith's bill, $70		106 10
" "	" "Courier" office printing & advertising		232 00
" "	" Wm. Hunter, engineer, on acct. $132; Wm. Sparks $132 . .		264 00
" "	" Smith, engineer, $25; laborers $88.50		113 50
	Amt. carried over,		$3433 71

			Amount forward,	$3433 71
Sept.	14,	To	cash paid firemen $840.26; A. Ludlum, labor, $34.50	874 50
"	"	"	Hamilton & Moreton, on acct., bill cots	125 00
"	"	"	Zabriski, bill lithographs $100; carpenter work $64.12	164 12
"	"	"	William Neal, engineer, $176; butts and screws	181 13
"	"	"	L. Briggs, lightering spars and use lighter	120 20
"	"	"	clearance at Custom House	30 90
"	"	"	bail bond at suit of Emmons $10; seamen's wages $15	25 00
"	15	"	several seamen's wages due $45; 1 tin cullender $3	48 00
"	"	"	Brown & Phillips, tin-ware &c. per bill	123 75
"	"	"	Beck & Palmer, bill oilcloth	84 80
"	"	"	Nelson & Co., bill lightering & labor on coal to steamer	757 00
"	"	"	Huton & Timmerman, bill brushes &c. $59.62; hardware $29.50	88 52
"	"	"	seamen $12; cartage $6; N. Miller, ship stores $151.50	169 50
"	"	"	Long & Co. on acct. painting $500; cartage & labor $4.50	504 50
"	17	"	W. D. Niles on acct. carpenter work	500 00
"	"	"	Durand & Co. tin ware $219; W. Neil, bill carp. work $257.50.	476 50
"	"	"	Frazer's bill chronometers & quadrants	320 00
"	"	"	lanterns $20; 18th, bill awnings, $334.70	354 70
"	18	"	John Walker's bill meats and vegetables	499 47
"	"	"	paid Chase, 2d mate, $65; advertising $66	131 00
"	"	"	J. Genellas' bill, crockery, $826.16; lighterage $12	838 16
"	"	"	R. McLea, bill rigging, &c.	31 90
"	19	"	Mc & Hinkly, bill ladles, plates, &c.	21 50
"	"	"	Coleman & Co., stores $52; Walters & Co., ship carpent. $3415	3467 00
"	20	"	Gould, bill water $81.30; Hamilton & Moreton, rep. boilers $464.11	545 41
			Amount carried over,	$13,914 27

		Amount forward,	$13,914 27
Sept. 21,	To cash paid stationery $10; Long & Co. bill, painting bill $660.10		670 10
" " "	W. D. Niles' bill repairing wheels, balance		542 25
" " "	McCondray & Co., bill lumber $27.90; outward pilotage $64		91 90
" 25 "	Colgate, bill oysters to E. Lecksun		100 00
" 27 "	"Pacific News," bill printing $74; cotton lines, $15		89 00
" " "	M. L. Levan, upholstery work		131 35
Oct. 1, "	Sheriff's fees, suit Kitteridge		43 63
" " "	J. L. Riddle & Co., basket, chairs, &c.		22 00
" " "	Harris & Panton, bill essences $12.25; N. Miller, 1 M. Segars $85		97 25
" " "	S. L. Dennison, butcher's bill $423.97; ditto., 2d, $291.36		715 33
" 12 "	Maynard & Co., bill groceries, &c. flour and ship stores		2,505 28
" 14 "	L. Comb & Co., bill damask $79.50; G. Elliott, carp. work $131.75		211 25
" " "	H. Sweetser, deck hand $24.56; advertis'g and print'g $222		248 56
" " "	Mattoon & Co., flour, groceries, &c.		59 75
" " "	Wm. H. Wheaton, posting bills,		5 00
" " "	24 cases wines & liquors, 8 bbls. pilot bread, 1 cord wood		409 64
			19,858 82
" " "	commission and disbursements on receipts, 7,400 48 @ 5 ℘.		1,362 96
	19,858 82		$21,221 78

1850.

$27,259 30

Oct. 1. To balance old acct. average due Sept. 25th, 1,382 13

Contra.

1850.			Cr.
Sept. 11,	By cash rec'd 1 passage to Santa Barbara		60 00
" 12, " "	Passage tickets and freight		270 00
" 13, " "	do. do. do.		330 00
" 14, " "	do. do. do.		1,269 11
" " " "	do. do. do.		168 63
" 15, " "	do. do. do.		832 74
" 16, " "	Juan Cima, tickets sold by him		4,470 00
	Amt. carried over,		$7,400 48

		Amount forward,	$7,400 48
Oct.	1,	By cash received of owners in part payment for repairs and outfit	12,439 17
			$19,839 65
		Balance due C. Minturn to new ac.	1,382 13
			$21,221 78

San Francisco, 20th Oct., 1850.

CHAS. MINTURN, *Agt.*

Schedule B.

Steamer Gold Hunter and owners in acct. with Chas. Minturn, Agt.

1850.				Dr.
Oct.	5,	To cash P. Sheriff's fees, $58 99; bunting for signal, $15		73 99
"	19,	" " Nelson & Co., bill lightering from storeship		48 00
Nov.	7,	" " Maynard & Co., cartage stores Sept. 28th		25 00
"	8,	" " F. W. Emmons, runner for passengers		200 00
"	13,	" " Webster & Co. bill copper work, repairing		41 34
"	20,	" " Custom House entry and permit		46 38
"	21,	" " Posting bills, $4; 1 bbl. tallow $40 50		44 50
"	"	" " Wm. H. Davis' disbursements at San Diego		1,539 27
"	22,	" " 1 bbl. sperm oil, $62; Capt. McLean on ac., $20		82 00
"	"	" " Crew, waiter, firemen, &c., per pay roll		7,640 72
"	23,	" " Two blow-cocks, Mosier, @ $100 each		200 00
"	"	" " Crew, bal. due per pay roll		1,484 54
"	"	" " Brushes, $4 50, clearance at Custom House, $8 50		13 00
"	25,	" " Hospital dues, crew, &c.		44 38
"	"	" " E. M. Neal, coal heavers and labor		436 00
"	"	" " Maynard & Co., bill ship stores		1,777 27
"	"	" " F. C. Chase, lanterns, lamps, &c.		119 75
"	"	" " Hoit bro. bill, 399 lbs. bar iron, ct.		49 88
"	"	" " Capt. McLean, bal. wages, &c.		361 60
"	26,	" " "Herald," advertising, $19; bill bread $15 37		34 37
"	"	" " T. D. John's bill ship store		406 50
			Amt. carried over,	$14,648 49

	Amount forward,		$14,648 49
Nov. 26,	To cash paid bill powder, $14 40; labor, $8, cook, wages, $392 15 . . .		414 55
" 27, " "	J. P. Peabody on ac. wages, $380. lead lines, $36 . . .		416 00
" 29, " "	Pilotage steamer to sea . .		60 00
" " " "	111 tons English coal (trip to Oregon), c. 23		2,533 00
" 30, " "	Urie & Co. bill water . .		27 90
Dec. 2, " "	J. B. Peachy, Purser (expenses pr. ac. ren'd		3,659 56
" " " "	E. M. Neal, bal. wages due pr. pay roll, Nov. 20 . . .		727 33
" " " "	Mott, Talbot & Co., bal. due them pr. ac. Oct. 22.		
" " " "	Walker & Co., bill beef, &c., for Oregon		393 93
" " " "	Flint & Peabody, 1000 gunny bags for coal, trip to Mazatlan		250 00
Dec. 4,	To cash paid sundry bills advertising . .		51 50
" " " "	Harbor master's fees . . .		11 88
" " " "	R. Mark, bill white lead . .		16 00
" " " "	Miss Meron on ac., wash bill . .		100 00
			$23,350 14
	Commission on disbursements, $23,350 14		
	Less Purser's debits . . 3,659 56		
	$19,690 58 @ 5%		984 53
			$24,334 67
Dec. 5,	To amt. disbursements as above . .		24,334 67
" " "	Coms. on coal purchased, $1,691 10 @ 5%		84 55
" " "	2 mos. and 2 days' int. on do. . .		183 48
" " "	$93\frac{21}{100}$ tons coal pr. invoice . .		1,691 10
	Commissions on receipts, 8,844 52		
	Less Purser's receipts, 3,919 65		
	$4,924 87 @ 5%		246 24
			$26,540 04
1850.			
Nov. 22,	To balance brought down . . .		1,769 55

C. MINTURN, *Agent.*

San Francisco, 5th Dec., 1850.

Contra.

1850.		Cr.
Nov. 1,	By cash received from Assignees Simmons, Hutchins & Co., being a bonus for coal not delivered from ship Patagonia	90 00
" 23,	By cash amt. tickets sold trip to Oregon	4,570 00
" " " " "	freight for trip " "	126 87
Dec. 2,	" " J. B. Peachy (Purser) rcpts. for ac. ren.	3,919 65
	" " Freight ren'd Robinson, Bissell & Co., for 9 bales bags from San Blas	138 00
		$8,844 52
Dec. 5,	Cash received of owners in part payment of balance due	15,925 97
		$24,770 49
	Balance due C. Minturn, av. due Nov. 22	1,769 55
		$26,540 04

Schedule C.

Steamer Gold Hunter and Owners in acc't with Chas. Minturn, Agt.

1850.		Dr.
Dec. 14,	To cash J. B. Peachy, purser, bal. wages pr. pay roll	109 75
" " "	J. B. Peachy, for amt. cash on hand Nov. 20, and credited in his receipts as per account 5th inst., and now included in his account of Dec. 18th	260 09
" "	To cash per Blunt's dft. to Morris & Co., for wood	1,000 00
" 18,	" " Officers' and crew wages, per pay roll	3,532 82
" " " "	Dr. Stewart, medical attendance on crew	50 00
" " " "	Boat Clara, 855 gals. water @ 3 cts.	25 65
" " " "	Hospital dues and Custom House entry	8 77
" " " "	Capt. Blunt, salary and head money	568 00
" " " "	M. Dunn, assistant cook, wages	90 00
" 19,	" " Henry Vary, seaman, and bal. crew, wages as per pay roll	312 33
" " " "	Mrs. Wilson, bal. wash bill as ren'd	20 00
" " " "	Execution and costs, suit *vs.* Clark, for wharfage	717 15
	Amt. carried over,	$6,694 56

2301.

	Amt. forward,	$6,694 56
Dec. 19,	To cash pr City tax, valued $60,000 @ 60 cts. on 1 ℔	360 00
" " " "	State tax, " $60,000 ¼ ℔	150 00
" " " "	County tax on ¾ or 45,000 70 @ 1 ℔	315 00
" " " "	Cunningham's wharf, for wharfage to Nov. 23d ult.	400 00
" " " "	Stationery and advertising	20 00
		$7,939 56
	Commissions on disbursements 7939 56	
	" " receipts 1920 59	
	$9,860 15 @ 5 ℔	493 00
		$8,432 56
1850.		
Dec. 19,	To balance brought down	801 19

Contra.

1850.		Cr.
Dec. 19.	By cash rec'd of purser for pass. and fr't pr acc.	1456 98
" " " " "	for freight specie for B. & L.	39 35
" " " " "	from purser for am't paid Capt. Blunt, and not deducted from his acc.	50 00
" " " " "	Capt. Blunt, bill liquors, &c., on board	89 13
" " " " "	L. Maynard, bill liquors, &c., on board	103 13
" " " " "	Mr. Bucklew, passage and fr't from Portland	141 00
" " " " "	1 p'r old gold scales sold	25 00
" " " " "	purser for health fees, passengers	16 00
		1920 59
" "	By cash rec'd of owners on acc. of bal. due from steamer,	5710 78
	Balance due Chas. Minturn av. due Dec. 18,	801 19
		$8432 56

E. E. *San Francisco*, 20*th Dec'r*, 1850.

CHAS. MINTURN, *Ag't.*

Endorsed Libel. Filed Oct. 25, 1851.

The President of the United States of America to the Marshal of the Northern District of California, greeting:—

Whereas, a libel has been filed in the District Court of the United States of America for the Northern District of California, on the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and fifty-one, by Charles Minturn, against L. Maynard, F. Billings, J. C. Brenham, Isaac T. Mott, G. A. Grant, *et al.*

Action, civil maritime, for services, materials and supplies furnished the Steamer "Gold Hunter," therein alleged to be due the said libellant, amounting to four thousand, five hundred $\frac{61}{100}$ dollars, and praying that a citation may issue against the said respondent, pursuant to the rules and practice of this court; now, therefore, we do empower and strictly charge and command you, the said Marshal, David F. Douglass, N. D. of California, that you admonish the said respondents, if they shall be found in your District, that they be and appear before the said District Court, on the 11th day of November, at the court room, in the City of San Francisco, then and there to answer the said libel, and to make proper allegations in that behalf.

And have you then and there this writ, with your return thereon.

Witness the Hon. Ogden Hoffman, Jr., Judge of said Court, this twenty-fifth day of October, in the year of our Lord one thousand eight hundred and fifty-one, and of our Independence the seventy-sixth.

SMITH & WILLSON,
Proctors.

JNO. A MONROE,
Clerk,
by JANES,
D. C.

Served personally, Oct. 25, 1851, on Charles J. Brenham and F. Billings.

Oct. 27, 1851, on G. A. Grant, Isaac T. Mott, and L. Maynard.

(Signed) DAVID F. DOUGLASS,
U. S. Marshal N. D. California.

At a stated term of the District Court of the United States of America for the Northern District of California, held at the Court House, in the City of San Francisco, on Thursday, the 26th day of February, in the year of our Lord one thousand eight hundred and fifty-two, present, the Honorable Ogden Hoffman, Jr., District Judge.

CHARLES MINTURN
vs.
L. MAYNARD *et al.*

On motion, Hagar, Proctor for "Grant," one of the defendants, it is ordered that he be allowed to file the answer of said "Grant,"

upon his filing stipulations for costs, and giving all parties interested notice of such filing.

Endorsed Filed Feb. 26, 1852.

UNITED STATES DISTRICT COURT.

In Admiralty.

CHARLES MINTURN
vs.
ISAAC T. MOTT, impleaded with L. MAYNARD and others.

The answer of Isaac T. Mott, one of the defendants in this suit, to the libel of Charles Minturn, libellant.

And now comes Isaac T. Mott, and for answer to the libel of Charles Minturn against him, the said Isaac T. Mott and others, doth for himself allege and propound as follows, to wit:—

First. This respondent admits that the libellant, from about the 1st of September, 1850, until about the 20th day of December, 1850, was the appointed and authorized general agent and broker for said steamboat, at San Francisco.

Second. This respondent admits that during said period, when the libellant was so general agent and broker, it became and was necessary to pay for certain labor, services, and supplies, to fit and enable said steamboat to execute and perform her voyages and duties; but he does not admit that the same are correctly and particularly set down and specified in the schedules annexed to said libel, and denies the same, leaving the libellant to the proof thereof as he shall be advised.

Third. As to the said several matters in the third specification of said libel alleged and set forth, this respondent says that he has not sufficient knowledge or information thereof to form a belief, and therefore he does not admit the same, but leaves the said libellant to the proof thereof, as he shall be advised.

Fourth. And this respondent denies that there is now any sum justly due and owing to the said libellant, from the owners of said steamboat, as he is informed and verily believes, as is in said fourth specification set forth and alleged; and he alleges, on information and belief, that the said libellant has been fully paid and satisfied for all supplies, advances, and other matters, furnished and advanced by him for said steamboat, as set forth in said schedules to said libel.

Fifth. And he denies that any sum is now due, for any such supplies and necessaries, to the libellant, from the said defendants.

Sixth. He admits that said steamer has been sold, under a decree of this honorable Court, for seamen's wages, and that, after paying said seamen, and other liens, there is a large surplus remaining in the Registry of this Court; that seventeen-sixtieths of said surplus belongs to this respondent, as late owner of that amount of interest in said steamer; that he has not sufficient information, and therefore cannot state the respective interests or claims of the other defendants,

in said libel mentioned, to said surplus, nor whether most of said owners, who are interested in the fund in the Registry, are insolvent, or have no other property, goods, chattels, or effects, except such as are in the Registry of this Court, and he therefore does not admit the said allegations, but leaves the libellant to the proof thereof, as he shall be advised.

Seventh. And this respondent alleges and sets forth, that he is not liable or indebted to the libellant in any sum whatever, by reason of the premises; that some time in the month of February last, this respondent and said libellant accounted together of and concerning the premises and the items in said schedules set forth; and this defendant then paid and satisfied said libellant in full, for all sum or sums due from this respondent to him, and took his receipt in full therefor; and the libellant accepted and received such payment in full satisfaction and discharge of all claims or demand against this respondent, by reason of the premises, and of any and all transactions arising out of the said steamer, and out of the items and advances in said schedules set forth, and gave his receipt to this respondent in full therefor.

Eighth. That all and singular the premises are true.

Wherefore this respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid as against this respondent, and to condemn the libellant in costs, and otherwise right and justice to administer in the premises.

(Signed) I. T. MOTT.

On this 11th day of Nov., 1851, appeared before me Isaac T. Mott, above named, and was sworn to the truth of the foregoing answer.

JNO. A. MONROE,
U. S. Commissioner.

ELISHA COOK,
Proctor for Mott.

WM. G. WOOD,
Advocate.

Endorsed Filed Nov. 11, 1851.

UNITED STATES DISTRICT COURT,
Northern District of California:

CHARLES MINTURN
AGAINST
LAFAYETTE MAYNARD and others. } In Admiralty.

To the Honorable Ogden Hoffman, Jr., Judge of the District Court of the United States for the Northern District of California:—

The replication of Charles Minturn, libellant, to the answer of Isaac T. Mott, alleges that he, the libellant, will aver, maintain and prove his libel to be true, certain and sufficient, and that the said

answer of the said defendants is untrue, uncertain and insufficient, and he humbly prays as in and by his said libel he has already prayed.

(Signed) SMITH & WILLSON,
Proctors for Libellants.

JOHN W. DWINELLE,
Advocate.

Endorsed Filed Dec. 6th, 1851.

I consent that this replication be filed with the same effect as if filed in due time.

Dec. 6th, 1851. (Signed) WOOD & COOK.

UNITED STATES DISTRICT COURT,
Northern District of California:

CHARLES MINTURN
AGAINST
LAFAYETTE MAYNARD and others. } In Admiralty.

To the Hon. Ogden Hoffman, Jr., Judge of the District Court of the United States for the Northern District of California:—

The replication of Charles Minturn, libellant, to the answer of Lafayette Maynard, Charles J. Brenham, and Frederick Billings, alleges that he, the libellant, will aver, maintain and prove his libel to be true, certain and sufficient, and that the said answer of the said defendants is untrue, uncertain and insufficient, and he humbly prays as in and by his said libel he has already prayed.

(Signed) SMITH & WILLSON,
Proctors for Libellant.

JOHN W. DWINELLE,
Advocate.

Endorsed Filed Dec. 6th, 1851.

I consent that this replication be filed with the same effect as if filed in due time.

H. BILLINGS,
Dec. 6th, 1851. *for Maynard, Brenham and self.*

UNITED STATES DISTRICT COURT,
Of the Northern District of California:

In Admiralty.

The answer of Gilbert A. Grant, one of the defendants, to the libel of Charles Minturn, libellant.

And now comes the said Gilbert A. Grant, of the City of San Francisco, California, and for answer to the libel of Charles Minturn, doth allege and propound as follows, to wit:—

That he has no knowledge, information or belief, except the in-

formation contained in said libel, that said libellant was the duly appointed and authorized general agent and broker for the steamship Gold Hunter, as is alleged in the first article of said libel. That the libellant was not so appointed or authorized by or with the consent of defendant, and that during said alleged agency, to wit: on or about from the first day of Sept. last to the 20th of Dec., and for a long time thereafter, this defendant was absent from the State of California, and in the Atlantic States.

That this defendant does not know, and has not been informed save by said libellant, and cannot answer as to his belief, or otherwise, whether or not it was necessary to procure and pay for any of the labor, services, materials and supplies specified in schedules A, B, C, to libel annexed, to fit, prepare or enable said steamboat to execute or perform any voyages or duties, which by the direction of the owners thereof she was engaged, as is alleged in the 2d article of said libel, but this defendant denies that any such payments or voyages were made by or with his authority or consent.

And he is informed, and so charges the truth to be, that a large portion, to wit: $6511 97 thereof, of the labor, services, materials and supplies claimed to and charged for, by libellant in his libel and schedules, was and is for a trip made by said steamer, under the direction of said libellant, to the Territory of Oregon, without the approbation, profit, knowledge, or consent of the owners thereof, or a majority of them in interest, against their interests, and to their great loss and injury, for which libellant has no legal claim or demand against this defendant.

Defendant has no knowledge, information or belief, save the information contained in said libel, that libellant paid the several sums of money specified in said schedules, or that by any arrangement with the owners of said steamboat he was entitled to charge or receive from said owners five per cent. upon the moneys received or disbursed by him, as is respectively alleged in the 3d article of said libel; and so far as it respects said defendant making any such arrangement he denies it to be true, and charges that such per centage is exorbitant, unusual and beyond the ordinary charges for such services.

Defendant denies that there is any sum due from him or from the other defendants to said libellants, as is alleged in said fourth article of said libel, and set forth in said schedules; but this defendant has been informed, and so charges the truth to be, that this and the other defendants have settled with said libellant, and received full acquittances and discharges from him for the sums aforesaid; and, further, he says, that during his absence from the State as aforesaid, John N. Beach acted as the attorney in fact of this defendant, with limited powers, under a special power of attorney, and as this defendant is informed by said Beach, on or about the 23d day of December, 1850, as such attorney, he had a settlement with and gave to said libellant, a draft or bill of exchange on defendant, for about the sum

of $4,700, in full discharge and acquittance of defendant from the sum claimed to be due to libellant in said libel: that said libellant still holds said draft, and heretofore, to wit: some time in the month of June last, commenced a suit thereon, and for services rendered as agent of and for necessaries and supplies furnished to said Steamer Gold Hunter, (it being for the same indebtedness as this defendant believes claimed by libellant in said libel,) against the defendant by attachment during his absence in the District Court of the 4th Judicial District of this State, which said suit is still pending, said court having jurisdiction thereof, and as this deponent believes and charges, is a bar to the further prosecution of said libel.

And defendant denies that any sum is due said libellant for supplies and necessaries for said steamer, for the prosecution of her several voyages, as is alleged in the fifth article of said libel, but this defendant believes, and so charges, that said libellant, in bad faith, contrary to good agency, and the interest of the absent and non-resident owners of said steamer, and the majority thereof in interest, and without notice to them, secretly dispatched said steamer on the said voyage to Oregon, for purposes of private speculation, and not for profit, by means whereof this defendant has sustained great loss and damage, to wit: $20,000; and a large portion of said claim for supplies and necessaries were made as is hereinbefore stated.

Defendant admits said steamer has been sold under a decree of this honorable Court, as is alleged in the 6th article of said libel, and that there is, or was, a surplus remaining in the Registry of this Court, belonging to the defendants, or some of them, in said libel mentioned as owners of said steamer, some of whom are residents of this State, as is in said libel set forth; but whether or not said owners, or any of them, are insolvent (except as regards himself, which he admits is true), does not know, and has not been informed; but defendant has been informed, and so charges the truth to be that said libellant has wrongfully applied for, and received, a large portion of said surplus, to wit: about the sum of $1,300, from and out of the Register of this honorable Court, and which, of right, belongs to the former owners of said steamer, of which sum $619 rightfully belongs to this defendant, as the owner, at the time of the sale, of one-tenth part thereof.

And lastly, all and singular the premises are true.

Wherefore, this defendant prays that this honorable Court will pronounce against the libel aforesaid, and condemn the libellant in costs, and otherwise right and justice administer in the premises. And further, that said libellant may be required to answer the interrogations hereunto annexed.

(Signed) GILBERT A. GRANT,
Respondent.

JNO. S. HAGAR,
Proctor and Counsel.

On the 26th day of February, A. D. 1852, appeared, personally, Gilbert A. Grant, the above named defendant, and was sworn to the truth of the foregoing answer, before me,

HENRY B. JANES,
U. S. Commissioner.

Endorsed Filed February 26, 1852.

Interrogatories referred to in the foregoing answers.

1*st*. By whom, and in what manner, were you appointed and authorized to act as agent of said steamer Gold Hunter?

2*d*. While you were acting as agent of said steamer, did she perform a trip or voyage to Oregon, and at what time?

3*d*. By whose direction and consent was said steamer dispatched on said voyage to Oregon? If by any of the owners thereof, particularly mention their names.

4*th*. Was said steamer advertised, and for how long, for freight or passengers, for said voyage to Oregon, prior to her being dispatched; and did she then take any freight or passengers, and what were the proceeds thereof?

5*th*. What were the expenses of said voyage to Oregon?

6*th*. For what objects and purposes was said voyage made?

7*th*. Did you act in good faith, and for the best interest of all the owners in dispatching said steamer on the trip to Oregon?

8*th*. What part, if any, of the proceeds arising from the sale of said steamer, have you, or your attorneys or proctors received from out of the Registry of this court, and how have you appropriated the same, and to whose credit?

9*th*. What amount of moneys have you or your attorneys received on the suit and attachment commenced against this defendant in the District Court of the 4th Judicial District, and how have they been appropriated?

U. S. DISTRICT COURT,
N. District of California:

CHARLES MINTURN
vs.
LAFAYETTE MAYNARD and others.

To the Hon. Ogden Hoffman, Junior, Judge of said Court.

The replication of Charles Minturn, libellant, to the answer of Gilbert Grant, alleges that he, the libellant, will aver, maintain, and prove his libel to be true, certain and sufficient, and that the said answer is untrue, uncertain and insufficient. And he humbly prays as in and by his said libel he has already prayed.

SMITH & WILLSON,
Proctors for Pl't'ff.

J. W. DWINELLE,
Advocate.

2305.

DISTRICT COURT OF THE UNITED STATES,
For the Northern District of California:

CHARLES MINTURN
vs.
LAFAYETTE MAYNARD and others.

SMITH, WILLSON & DWINELLE,
Proctors for Libellant.

WOOD & COOK & F. BILLINGS,
For Defendant.

Endorsed Filed Feb. 21st, 1852.

DISTRICT COURT OF THE UNITED STATES,
for the Northern District of California:

CHARLES MINTURN
vs.
LAFAYETTE MAYNARD, GILBERT GRANT, and others.

The answer of Charles Minturn, the plaintiff above named, on oath, to the interrogatories annexed to the answer of Gilbert Grant, above named, to the libel filed in the above cause, respectfully shows and states, in reply to the first interrogatory:—

Lafayette Maynard, above named, sent for me and desired me to take the agency of said steamer Gold Hunter, as stated in the libel, and all, or nearly all of the other owners affirmed such appointment by recognizing my action in such capacity, and by paying bills rendered for moneys paid, and commissions earned in such capacity, as stated in libel.

In reply to second interrogatory:—

She did, and started on the 25th day of November, 1850.

In reply to third interrogatory:—

By Messrs. Maynard, Wells & Co., Billings & Brenham, who owned a controlling interest in said Gold Hunter.

In reply to fourth interrogatory:—

She was advertised for freight and passengers for three days, and took freight and passengers. The proceeds amounted to $7,340 or thereabouts.

In reply to fourth interrogatory:—

The expenses of said voyage were $14,372, or thereabouts.

In reply to sixth interrogatory:—

To make money.

In reply to seventh interrogatory:—

I acted under the instructions of the owners who resided here, and who owned a controlling interest, and exercised no discretion.

In reply to eighth interrogatory:—

To my knowledge, neither I nor my attorneys or proctors received any money from the Registry of this court, from the sale of the Gold Hunter.

In reply to the ninth interrogatory:—

To my knowledge, neither I nor my attorneys received anything.

CHARLES MINTURN.

Sworn March 11th, 1852.

HENRY B. JANES,
U. S. Commissioner.

Endorsed Filed March 11th, 1852. Answer to Interrogatories.

DISTRICT COURT OF THE UNITED STATES,
for the Northern District of California:

CHARLES MINTURN
vs.
LAFAYETTE MAYNARD and others.

The amended answer of libellant to the 1st, 4th, 5th and 6th interrogatories annexed to the answer of defendant Grant.

To the fourth interrogatory, said Minturn now says:—

I was appointed by Lafayette Maynard, as stated in libel, and defendants Billings, Brenham, Mott, Chapman, and Wells & Co., who, together with Maynard, owned twenty-six thirtieths of said steamer Gold Hunter, affirmed such appointment by paying my bills rendered as such agent, for moneys paid and commissions earned, as stated in said libel.

In reply to fourth interrogatory, said Minturn says:—

She was. She was first advertised on the 21st of November, and again on the 22d in the Alta California, Herald, and Pacific News. She was also advertised by posting large bills round the town on the 21st Nov. She did take freight and passengers to the amount of five thousand two hundred and forty-one dollars and some odd cents.

In reply to the fifth interrogatory, said Minturn says:—

The expenses were $6,875, as nearly as I can state the same.

In reply to the sixth interrogatory said Minturn says:—

For the purpose of taking freight and passengers for money, and to advance the pecuniary interest of the owners, and for no other purpose, that I am aware of.

(Signed) CHARLES MINTURN.

Sworn to March 11th, 1852.

HENRY B. JANES,
U. S. Commissioner.

Endorsed Amended Answer to Interrogatories. Filed March 12th, 1852.

U. S. DISTRICT COURT,
Northern District of California:

CHARLES MINTURN
vs.
L. MAYNARD, C. J. BRENHAM, F. BILLINGS, ISAAC T. MOTT, impleaded, &c.

The following it is agreed between the libellant and the above-named respondents to be the state of the case upon which the cause is to be heard and determined by the court:—

First. That the steamer Gold Hunter was, and is, registered in, and belongs to, the port of San Francisco. That the above respondents, together with the other named defendants, were owners of the said steamer; each owning separate shares, and in different proportions; each having a separate bill of sale for his interest in the said ship.

That the libellant was the general agent of these respondents and the others, to manage the concerns of the ship, furnish supplies and disburse the accounts. That he did, in the course of his employment as such, furnish the supplies, &c., as in the account rendered, and that they were proper and necessary for the said ship in prosecuting her voyage; but the amount now due, if any, to be ascertained by reference to the commissioner, if the court decree these respondents to be liable upon this state of the case and the pleadings.

Secondly. That the said libellant from time to time settled his accounts with these respondents and the others separately, rendering to each his account separately, and crediting and debiting, as the case might be.

That said accounts were rendered from time to time during the fall and winter of 1850, and that he took payment from each owner on such accounts rendered, and gave a receipt in these words:—

San Francisco, 23d Dec., 1850.

Rec'd. of Capt. C. J. Brenham, sixteen hundred and sixty-eight $\frac{88}{100}$ dollars in full, for balance due for disbursements steamer Gold Hunter, per account current rendered 25th Nov. and 20th Dec., 1850.

(Signed) CHARLES MINTURN,
Agent.

That the account upon which the above payment was made, and the receipt taken, is as follows:

Capt. C. J. BRENHAM,

To balance pr. acc't. rend'd. average due Nov. 25,	$1,179 70
" Interest to Nov. 23d, 28 days @ 5% per mo.,	55 15
	$1,234 75
Balance due acc't current Dec. 20,	434 13
	$1,668 88

That these respondents and others, excepting G. A. Grant, have paid up in full the accounts as rendered to them separately, and that the amount now claimed by libellant, is the amount due by said Grant upon the bill and account rendered to him, and $150 due from La Montagne, a respondent, upon the account rendered him as one of the owners. That the accounts rendered were of the amounts due from each owner, according to his proportionate interest or ownership in the said steamer.

That said Grant gave a bill of exchange, for his account, to said libellant, which was received by him, but not paid, and an action at law has been brought by the libellant against said Grant for a cause of action, as set forth in the copy of the complaint marked (B) in the possession of John S. Heager, it being for the account rendered to said Grant as part owner of the said ship, and for exchange and re-exchange in said bill, being the same cause of action in this libel set forth, is now pending and undetermined.

The bill of exchange is as follows:—

$4,321 $\frac{03}{100}$. *San Francisco, April 1st*, 1852.

Three days after sight, please to pay to the order of Charles Minturn, Esq., four thousand three hundred and twenty-one $\frac{03}{100}$ dollars, value received, and charge the same to account of

GILBERT A. GRANT,
By John N. Beach, his Att'y.

To GILBERT A. GRANT,
26 *Front Street, New York.*

That an account was kept and rendered to each owner, as by exhibit hereunto annexed, marked (A).

These respondents are at liberty to produce proof of the facts, that some time before the above bill of exchange was given and received, the libellant sought to recover this claim, against said Grant, by process at law, and attachment of said vessel, and the circumstances under which the said proceedings were discontinued, and the said bill of exchange was given, and that the libellant be at liberty to produce such proofs also, on this hand, as he shall be advised and think fit.

March 12, 1852.

(Signed) JOHN CHETWOOD,
Proctor for Maynard, Billings and Brenham.

(Signed) C. COOK,
Proctor for I. T. Mott.

(Signed) A. T. WILLSON,
Proctor for Libellant.

DISTRICT COURT OF THE UNITED STATES,
Northern District of California:

CHARLES MINTURN
vs.
G. A. GRANT *et al.*

We hereby consent that the above cause be entered on the calender for Monday next, without service of notice, or note of issue.

A. T. WILLSON,
Proctor for Plff.

JNO. S. HAGAR,
Proctor for Grant.

Endorsed Filed Sept. 22d, 1852.

At a Special Term of the District Court of the United States of America for the Northern District of California, held at the court room in the city of San Francisco on Monday, the twenty-eighth day of November, in the year of our Lord one thousand eight hundred and fifty-three—

Present the Honorable Ogden Hoffman, Jr., District Judge.

CHARLES MINTURN
vs.
L. MAYNARD *et al.*

This cause having been heard heretofore on the exceptions filed by the defendant Grant, and said exceptions having been allowed and sustained by the court, and a motion having been made by the libellant's counsel that he be allowed to take proofs in support of the said libel; and said motion having been argued by the advocates for the respective parties, it is now ordered, adjudged, and decreed that the said motion be denied. And it is further ordered that the said libel of the libellant be dismissed without prejudice.

(Signed) OGDEN HOFFMAN, JR.,
U. S. District Judge.

Endorsed Filed Nov. 15th, 1852.

JNO. A. MONROE,
Clerk.

At a Special Term of the District Court of the United States of America for the Northern District of California, held at the court house, in the city of San Francisco, on Friday, the 12th day of November, in the year of our Lord one thousand eight hundred and fifty-two—

Present the Honorable Ogden Hoffman, Jr., District Judge.

CHARLES MINTURN
vs.
GILBERT A. GRANT *et al.*

This cause having been argued by the advocates of the respective parties on the dilatory exception put in and pleaded in the answer by the respondent Grant, and having been duly considered by the court, it is now ordered, adjudged, and decreed by the court that the said exception be allowed; and that the said suit, and the further prosecution thereof, with respect to the said respondent Grant, do abate and he discontinues, and that the said respondent do recover of the libellant his costs, to be taxed.

(Signed) OGDEN HOFFMAN, JR.,
U. S. Dist. Judge.

Endorsed Filed Nov. 28, 1853.

JNO. A. MONROE,
Clerk.

MINTURN
vs.
MAYNARD and others. } In Admiralty.

I hereby admit due service made this day of notice of appeal by the libellant in this case, from the decree filed by the court in said case Nov. 28, 1853.

(Signed) JNO. S. HAGAR,
For Resp'ts.

Endorsed Filed Dec. 6, 1853.

JNO. A. MONROE,
Clerk.

Dec. 8th, 1853.

CLERK OF DISTRICT COURT UNITED STATES—

Enter my appearance for all defendants in this case.

(Signed) JOHN S. HAGAR,

The clerk is hereby notified that the libellant in the above cause appeals from the decree rendered therein and filed Nov. 28, 1853, to the Supreme Court of the United States.

(Signed) H. P. HEPBURN,
Proctor for Libellant.

Dec. 6, 1853.

2308.

DISTRICT COURT,
Fourth Judicial District.

STATE OF CALIFORNIA,
County of San Francisco:

CHARLES MINTURN
vs.
GEORGE A. GRANT.

On the 22d day of March, A. D. 1851, the following complaint was filed in the above named court, in this cause, to wit:—

DISTRICT COURT,
4th Judicial District:

CHARLES MINTURN, of San Francisco,
vs.
GEORGE A. GRANT, of the City of New York.

The said plaintiff complaining, states, that the said defendant is indebted to him, the said plaintiff, in the sum of six thousand dollars for services rendered as agent for the steamer "Gold Hunter," of which the said defendant was part owner at the time of the rendition of such services, and for necessaries and supplies furnished to said boat, and for moneys advanced for such supplies, and for exchange and re-exchange on a bill of exchange drawn by the agent of said defendant on said defendant for such demands for services, supplies and moneys, and which said bill of exchange was dishonored.

Wherefore, plaintiff prays for judgment for said sum of six thousand dollars, and costs of suit.

SMITH, WILLSON & TAYLOR,
Plff. Att'ys.

And afterwards, to wit: on the same day, the following affidavit was filed, to wit:—

DISTRICT COURT,
4th Judicial District:

CHARLES MINTURN, of San Francisco,
vs.
GEORGE A. GRANT, of the City of New York.

City and County of San Francisco, ss:

Charles Minturn, being duly sworn, deposes and says that he the plaintiff above named. That the said defendant, George A. Grant, is justly indebted to the said plaintiff in the sum of six thousand dollars, over and above all legal set-offs, as nearly as this deponent can estimate the same; and that the said indebtedness arose on contract express. That this deponent knows that the said defendant

is a non-resident of the State of California, but is a resident of the City of New York.

(Signed) CHARLES MINTURN.

Sworn and subscribed before me, this 22d day of March, 1851.

ROD. N. MORRISON,
Co. Judge.

STATE OF CALIFORNIA,
County of San Francisco.

I, John C. Addison, Clerk of the District Court for said County, do certify the above and foregoing is a true copy of the original complaint, affidavit, summons and attachment, now on file in my office, and a true record of all proceedings in above stated cause, and that said cause is pending in said court, and undetermined.

Witness my hand and official seal, this 10th day of March, A. D. 1852.

(Signed) JNO. E. ADDISON,
[L. S.] *Clerk.*

DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT.

THE STATE OF CALIFORNIA,
County of San Francisco, ss:

The people of the State of California to George A. Grant, greeting:—

You are hereby summoned to appear and answer unto the complaint of Charles Minturn, filed in this court, within ten days after the service of this writ, if served within this county, and within thirty days after service, if served in any other county.

Witness the Hon. Levi Parsons, Judge of the Fourth Judicial District, this 30th day of June, A. D. 1851.

[SEAL.] Test,

(A true copy.) (Signed) JNO. E. ADDISON,
Clerk.

By JAMES D. GALBRAITH,
Dep. Clerk.

Endorsed Received July 15th, 1851, at 12, M., and served personally in the City of San Francisco on the within named Gilbert A. Grant by delivering him a copy of this summons and copy of complaint.

JNO. C. HAYS,
July 7th, 1851. *Sheriff.*

By THOS. P. JOHNSTON,
D. S.

DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT.

STATE OF CALIFORNIA,
County of San Francisco, ss:

The people of the State of California to the Sheriff of the County of San Francisco, greeting:

You are hereby again commanded to attach so much of the lands, tenements, goods, chattels, moneys and effects, not exempt from execution, of George A. Grant, wheresoever they may be found in this county, as will be sufficient to satisfy Charles Minturn in his claim for $6000, and safely keep the same, to satisfy any judgment that may be recovered by the plaintiff in this attachment. And of this writ make due service and return on the thirtieth day of June, A. D. 1851.

Witness the Hon. Levi Parsons, Judge of the Fourth Judicial District, this 7th day of June, A. D. 1851.

[SEAL.] Test, JNO. E. ADDISON,
(A true copy.) *Clerk.*

Endorsed Received June 17th, about 1 o'clock P. M., 1851. Minturn *vs.* Grant, alias attachment. By virtue of the within attachment, I this day, about 2 o'clock, attached the right, title and interest of the defendant in the steamer "Gold Hunter," her apparel, furniture and tackle.

(Signed) J. C. HAYS,
Sheriff.

June 17th, 1851. J. A. FREENAR,
Deputy.

DISTRICT COURT OF THE UNITED STATES OF AMERICA,
for the Northern District of California:

CHARLES MINTURN
vs.
LAFAYETTE MAYNARD, GILBERT A. GRANT, THOMAS G. WELLS, LUCIEN SKINNER, FRED. BILLINGS, CHARLES J. BRENHAM, ISAAC T. MOTT, I. DE LA MONTAGNE, E. M. NEAL, and THOMAS L. CHAPMAN.

Know all men by these presents, that we, Charles Minturn, Horatio N. Squire, and John Crane, all of the City of San Francisco, are held and firmly bound unto Lafayette Maynard, Gilbert A. Grant, Charles J. Brenham, and the other above named defendants and appellees in the above cause, in the sum of fifteen hundred dollars, to be paid to the said appellees; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs and representatives, jointly and severally, by these presents: sealed with our seals, and dated the twenty-second day of December, A. D. 1853.

Whereas the above named appellant has prosecuted an appeal to the Supreme Court of the United States at the City of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the District Court of the United States for the Northern District of California.

Now, therefore, the condition of this obligation is such, that if the above named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise the same shall remain in force.

(Signed) CHARLES MINTURN, [SEAL.]
HORATIO N. SQUIRE, [SEAL.]
JNO. CRANE. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 23d day of December, 1853.

(Signed) HENRY B. JANES,
U. S. Commissioner.

Horatio N. Squire and John Crane being duly sworn, depose and say, and each for himself says, that he is worth the sum of three thousand dollars over and above all his just debts and liabilities.

Attest, HENRY B. JANES,
U. S. Commissioner.

I approve the above bond, and the sufficiency of the sureties thereto.

(Signed) OGDEN HOFFMAN, JR.,
U. S. District Judge.

Endorsed I admit the sufficiency of within bond and sureties.

(Signed) JNO. S. HAGAR,
Att'y of Defts.

I, John A. Monroe, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the writings annexed to this certificate, number from page (1 to 44) one to forty-four inclusive, are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be affixed this fourteenth day of February, A. D. one thousand eight hundred and fifty-four.

[SEAL.] JNO. A. MONROE,
Clerk.

By ALEX. M. SCHELL,
Deputy Clerk.

Filed 1st Aug., 1854.

2d/0.

SUPREME COURT OF THE UNITED STATES.

No. 87.

CHARLES MINTURN, APPELLANT,

vs.

LAFAYETTE MAYNARD AND AL.

It is hereby stipulated and agreed, between the counsel for the appellant and the counsel for the defendants and appellees, Maynard, Brenham and Billings, impleaded with others, that the omissions and errors of the printed record in the above entitled cause be supplied and corrected, by the following admissions:

First. The answer of the defendants above named puts in issue the allegations of the libel, and avers that each of the defendants dealt with the libellant upon his separate credit, and that, by agreement, each was to be liable to the libellants only for his separate share or proportion of the commissions and advances of the libellant, and not for the share or proportion of any of the other part-owners; and that, in pursuance of said agreement, the libellant did, from time to time, render to each of the defendants an account of his receipts, disbursements and commissions as agent, in which account he debited each of the part-owners with his share or proportionary balance due to him as such agent; and that, from time to time, as the accounts were rendered, each of the defendants, except Grant, did pay and satisfy the libellant the full amount charged by him against them respectively, and did, upon each of the said occasions, take a receipt in full discharge of the balance so claimed to be due. That the sum now demanded in and by the libel is composed exclusively of the share or proportion of the balance due to the libellant for his disbursements and commissions, charged by him against the said Grant; that being prior to the filing of the libel, the said Grant made and delivered to, and the libellant accepted in settlement of the balance due him by the said Grant, a bill of exchange upon a drawee in New York; that the said bill was not paid at maturity, and thereupon the libellant commenced an action against the said Grant, in the State court of California, for the balance of accounts claimed to be due by the said Grant; that an attachment was issued in the said action, and by notice thereof the sheriff seized the right, title and interest of the said Grant in the steamer Gold Hunter, which action was and is still pending; and that the demand therein is the same demanded, stated and claimed in the libel in this